IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4263 OF 2007

Vasudeo Narayan Golatkar(deceased)
by heirs. ..Petitioners.

V/s.

Shivram Sawant Khem Sawant Bhosale
(deceased) by heirs. ..Respondents.

Mr.G.J.Sabnis for petitioners.

Mr.M.D.Parab for Respondent No.2.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 4, 2007.

P.C. :

1. Matter is heard for final disposal. Mr.Parab waives notice for respondent No.2. By consent, the petition is taken up for final disposal forthwith.

2. Respondent No.1, it is agreed, is not a necessary party for the purpose of considering relief claimed by the petitioners in this petition.

3. It is not in dispute that tenancy proceedings were initiated before the ALT and Tahasildar Kudal. Against the decision of the said authority, now the matter has reached before the Revisional authority. Petitioners have filed the said revision application.

It is the case of the petitioners that the revision has already been admitted by the revisional authority. During the pendency of the said revision application, petitioners moved an application for interim relief. By the impugned order dated 22nd March, 2007, the said application for stay has been rejected.

4. The argument canvassed before this Court on behalf of the petitioners is that, no positive finding has been recorded by the Divisional Commissioner, Konkan Division, Mumbai on the factum of possession of the suit house situated on the agricultural land inspite of the assertion of the petitioners that they were in possession thereof. Without such finding, the prayer for interim relief could not have been finally answered. It is contended that the revisional authority having admitted the revision, it was just, proper and expedient and in the interest of justice that the possession of the petitioners is protected.

5. The counsel for the respondent No.2, on the other hand, would contend that the respondent No.2 is in possession of the suit property, having purchased the same under section 32-G of the Tenancy Act.

6. The respondent No.2 may be justified in pointing out from the record that he has purchased the suit property(land) under section 32-G of the Tenancy Act. The fact remains as to who is in actual possession of the "suit house". If revision is pending before the revisional authority and if the petitioners were to be in possession of the "suit house" interest of justice would demand that possession of the petitioners with regard hereto is protected. However, the revisional authority has not examined this elementary aspect before rejecting the stay application preferred by the petitioners. The only reason that has been recorded by the revisional authority, in the impugned Judgment, is that, the papers would indicate that the respondent No.2 has already been held to be the tenant. That does not take the matter any further. It would be a different matter, if the revisional authority were to record a clear finding on the factum of possession of the "suit house", to be of petitioners or respondent No.2, as the case may be. It is only on such finding the request for interim relief can be properly addressed.

7. Instead of entering into that controversy for

the first time in writ jurisdiction, the appropriate course is to set aside the impugned order and restore the said application preferred by the petitioners to the file of revisional authority for being reconsidered by the revisional authority in accordance with the law, keeping in mind the above observations.

8. In the event revisional jurisdiction has been retransferred to Maharashtra Revenue Tribunal, that authority will consider the prayer for interim relief on the basis of restored application in terms of this order. That application be decided expeditiously. Till then the parties shall maintain status quo as of today with regard to the "house property".

9. This order is not an expression of opinion that the petitioner is in possession of the suit house situated on the agricultural land.

10. Petition disposed of on the above terms.